

EXHIBIT 8

Declaration of
AFT-NH President
Deb Howes

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

LOCAL 8027, AFT-NEW HAMPSHIRE, AFL-CIO, RYAN)
RICHMAN, JOHN DUBE and JOCEYLN MERRILL,)
teachers in the New Hampshire Public Schools, and)
KIMBERLY GREEN ELLIOTT and MEGHAN EVELYN)
DURDEN, parents or guardians of children in the New)
Hampshire public schools.)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his Official Capacity as)
Commissioner of the DEPARTMENT OF EDUCATION)
("DOE"), CHRISTIAN KIM in his Official Capacity as the)
Chair of the NEW HAMPSHIRE COMMISSION ON)
HUMAN RIGHTS, and JOHN FOMELLA in his Official)
Capacity as ATTORNEY GENERAL of the State of New)
Hampshire.)

Defendants.)

Civil No. 1:21-cv-01077-PB

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ANDRES MEJIA,)
CHRISTINA KIM PHILIBOTTE, and)
NATIONAL EDUCATION ASSOCIATION-NEW)
HAMPSHIRE,)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his official capacity only as the)
Commissioner of the New Hampshire Department of)
Education,)

JOHN M. FORMELLA, in his official capacity only as the)
Attorney General of the State of New Hampshire,)

AHNI MALACHI, in her official capacity only as the)
Executive Director of the New Hampshire Commission for)
Human Rights,)

CHRISTIAN KIM, in his official capacity)
only as the Chair of the New Hampshire Commission for)
Human Rights,)

KEN MERRIFIELD, in his official capacity only as the)
Commissioner of the Department of Labor,)

Defendants.)

DECLARATION OF DEBRAH HOWES

I, Debrah Howes, pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. My name is Debrah Howes. I am the President of the American Federation of Teachers-NH (“AFT-NH”). AFT-NH represents 3,500 teachers, paraeducators and school support staff, public service employees, and higher education staff across New Hampshire.

2. Prior to serving as President of AFT-NH, I was a reading and math intervention teacher with the Nashua Public School District since 2003. I spent 17 of those years teaching at the same school in Nashua, Amherst Street School, a K-5 Elementary school receiving Title 1 support, where between 62 and 78% of the families meet federal poverty guidelines in any given year and many students are English Language Learners. According to US Census data, the majority of the students enrolled at Amherst Street School are from recognized minority groups, with Hispanic being most numerous. Amherst Street School also serves a number of refugee families from Africa and Asia.

3. I first heard of a proposed bill HB544, a bill that would ban teaching on and discussion of certain divisive concepts related to sex and race (among other things) from public schools in January of 2021. At the time I was Vice-President of AFT-NH and active with our Legislative Committee, which follows legislation that could have an impact on the day-to-day work of our members.

4. Our first analysis of the legislation was that the bill, if it passed, would be extremely problematic. The language was hopelessly vague and, among other things, it prohibited teaching or discussions that explicitly or implicitly taught that any race or sex was superior to another or inferior to another or even made someone feel guilty about their race or sex. The bill only had three sponsors out of 400 members of the NH House, which is not many. In a year when a new state budget needed to be written and more than 600 other bills needed to be heard and considered, we were not sure this was anything more than an extremist reaction to

the widespread calls for more and better discussion, including in public schools, about longstanding racial inequities in our country and systemic racism that were brought to mainstream attention by the death of George Floyd and the Black Lives Matter protests in the summer of 2020.

5. When it came to the public hearing – held over zoom because vaccines were still not available to most – I was astonished to hear claims from a small group of supporters of the bill, who claimed that kids were being taught to hate themselves for being white and that schools were teaching students they could not be friends with people of other races and that kids were coming home in tears because of it. This is not what we do in New Hampshire public schools! I know because I teach in one and I lead a union of teachers and paraeducators who work in other schools across the state! Let me be clear: in my experience, I have never seen or heard of any of these things happening at the school where I worked, or in the Nashua public schools. Nor have any of the members of AFT-NH seen it, done it, or heard of it happening.

6. The public hearing on HB544 overwhelmingly consisted of people speaking *against* the adoption of the “Divisive Concepts” bill including teachers, university professors, faith leaders, community leaders even business leaders. We thought this bill would be put to rest because it was simply not actually happening in our public schools, but also was a really badly worded piece of legislation which left educators unsure of what exactly they could and could not talk about in the classroom. When the bill was tabled by the House instead of passed, we believed that would be the end of the legislation. However, the bill language was inserted within the massive annual budget, without further hearings, which was then passed.

7. When the budget including the “Divisive Concepts” language was signed into law on June 25, 2021, I had recently become president of AFT-NH after the sudden death of our

previous President (who was also a NH legislator.) Members were concerned about what the “Divisive Concepts” language would mean in practical terms for them. From my own colleagues there were questions about how to approach teaching the necessary background knowledge for students to understand a biography of Harriet Tubman commonly read by 5th graders. How much can you explain about the conditions of slavery and its impact on our country before you would break the law? Could we still read “The Story of Ruby Bridges” in 2nd or 3rd grade? How about “Martin’s Big Words?” These books require honest and factual conversations about US history with students, so they have sufficient background to understand the events in the story including what segregation was, how it hurt people and that there were some people who fought to keep it from ending.

8. A 2nd grade teacher in another AFT-NH local wanted to know how they would teach about Native Americans and still be honest about the historical facts. A middle school teacher wondered if she could still assign a classic American novel “To Kill A Mockingbird.” How careful would she have to be about the conversations she was having around it and what a student might subjectively infer?

9. A high school teacher wondered if the newly adopted law requiring the teaching about the Holocaust was in conflict with the new “Divisive Concepts” law. A member who teaches high school in another district was concerned that the “Divisive Concepts” language would be used to eliminate the ability of teachers to express support for LGBTQ students by designating their classrooms as a safe or welcoming place because expressing any support could lead to an inference that you are discriminating against others.

10. With the law newly in effect, but most schools on summer recess, I joined other education leaders in July 2021 in asking NH Commissioner of Education Frank Edelblut for

clarification on what exactly we were allowed to teach, say and do in the classroom and in school and what would run afoul of the new law. His response was that there would be a frequently asked questions (“FAQ”) document that would clarify everything. That FAQ put out by the NH Department of Education, NH Department of Justice and the NH Commission on Human Rights repeated much of the same vague language from the bill without really clarifying it. We could teach history and current events, but if a student or parent ever felt that the lesson or teacher was directly stating or even somehow implying that the student was racist, sexist, or anti-LGBTQ then the teacher could be disciplined: up to and including loss of license. It is this subjective nature of what a student infers, or at a further remove, what a parent who isn’t even in the classroom, infers about a lesson or classroom discussion (even what a teacher may be implying) that makes this hard to clearly define and incredibly frustrating.

11. These subjective inferences from students and parents not only impacts what happens in the classroom under the law, but it also impacts extra-curricular activities. The FAQs made clear that the “Divisive Concepts” bill applies to extra-curricular activities and, in fact, all teacher speech when interacting with students. Teachers interact with students throughout the day in innumerable touchpoints – in hallways, on sports fields, in after-school clubs, traveling to competitions, in teachers offices and in a myriad of other ways. The bill broadly reaches all discussions in all of these every day activities.

12. I surveyed the AFT-NH locals to find out what advice they were getting from their district administration on handling “Divisive Concepts” as school was getting ready to reopen for fall of 2021. Most were not hearing anything from their district administration. One district administration did have a legal presentation from a law firm that handles education cases. They were advised that if their curriculum guide was available so parents could exercise their opt

out rights for students, and if they were thoughtful about what they said in spontaneous conversations in response to events or to other student remarks and tied things back to content that is covered in the curriculum, they should be within the boundaries of the law. Yet, in another district, teachers were advised to take down all classroom rainbow flags and signs that stated “You Are Welcome Here.” The lack of clear, uniform guidance was creating disparity between the working and learning conditions in different New Hampshire school districts.

13. Knowing that most of my members started the school year with no guidance, other than those FAQs, on how to handle this “Divisive Concepts” law, I started planning a virtual Town Hall on the topic for October. I invited Commissioner of Education Edelblut to come have talk about the law and answer members questions about what they could and could not teach. Commissioner Edelblut declined the invitation. He referred us to the FAQs, which he called “straightforward and clear” and offered to meet one on one with any member who wanted to discuss individual circumstances. We had our Town Hall without him. While we weren’t able to add any clarification from the NH Department of Education, we did have informative presentations on First Amendment Rights and their limits under the US and NH Constitutions as well as similar “Divisive Concepts” laws that were showing up in other states. Members were able to share their experiences from the first 6 weeks of school. Mostly members expressed some level of concern that they might be perceived by a student or parent as crossing a line because of an inference, especially because that line had not been made clear.

14. By far the biggest fear was that the “Divisive Concepts” law would be weaponized – that the same people who showed up at our school board meetings calling teachers, school administrators and school board members “child abusers” for having students wear masks during the COVID pandemic, would now be coming after teachers because they

somehow thought we had made a student feel labeled as racist, sexist or anti-LGBTQ. And that is more or less what happened. An online extremist group “Moms for Liberty” Hillsborough County (NH) offered a \$500 reward for the first person who caught a teacher violating the “Divisive Concepts” law. Another group called “No Left Turn” reported teachers to the Department of Education for signing a pledge to teach “honest” history.

15. The day after the Moms for Liberty “bounty,” the NH Commissioner of Education announced he was adding a page to the NH Department of Education website to make it easier for parents, students, families, other teachers or even members of the public to report teachers for what they consider violations of this law. AFT-NH had been looking at challenging the legality of the “Divisive Concepts” law, but adopting a wait and see attitude while it rolled out until the webpage encouraging complaints was put up. At that point we decided that it was time to move forward with the lawsuit challenging the law before our members started losing their jobs for doing something no one could clearly define or give examples of, and that rested mostly on subjective perceptions of what someone might have meant.

16. Since the commencement of the lawsuit, in my role as President of the AFT-NH, I have been made aware that members have been complained about simply for promising to teach “honest” history and for trying to make their classrooms inclusive for all. Without clear guidance, the “Divisive Concepts” law has operated as a black cloud over educators, who are fearful that its vague language will be weaponized for political purposes. It has chilled their ability to have open discussions in their classrooms and to teach and prepare our New Hampshire public school students to be critical thinkers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of August, 2023.

/s/ Debrah Howes

Debrah Howes